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No. 362] NEW DELHI, MONDAY, AUGUST 25, 1952

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 22nd August 1952

No. BR-CS/52(2).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the persons whose names and addresses are given below as notified under notification No. BR-CS/52(1), dated the 13th June, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri Mohan Wahi, C/o U.P.C.C., Mahalla Kadam Kuan, Patna City.

Shri Gopeshwar Mahtl of Village & P.O. Chakulia, District Singhbhum.

No. MD-P/52(106).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose names and addresses are given below, as notified under notification No. MD-P/52(35) dated the 25th April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Janab K. Hassan Ghani, Advocate, Fort Cochin.

Shri Palat Ravunni Menon, Athani House, Fort West Road, Palghat (South Malabar).

No. MD-P/52(107).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under notification No. MD-P/52(46), dated the 25th April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri S. G. Salianna of Southerpetta, Kankanady, Mangalore-2.

New Delhi the, 23rd August, 1952

No. MD-P/52(108).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under notification No. MD-P/52(9), dated the 8th April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri Pasumarthi Veerabhadraswamy of Vizianagram.

No. MD-P/52(109).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the persons whose names and addresses are given below, as notified under notification No. MD-P/52(11), dated the 8th April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri Korukonda Subaraju of Lingamurthy Hospital, Anakapalli.

Shri Digumarthi Venkata Ramaswamy of Maharani-peta, Door No. 8/3, Visakhapatnam.

No. MD-P/52(114).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under notification No. MD-P/52(25), dated the 26th April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri N. S. M. S. M. Saminathan Chettiar, Merchant, South Street, Aruppukottai, Ramanathapuram District

No. MD-P/52(115).—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under notification No. MD-P/52(26), dated the 26th April, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri N. S. M. S. M. Saminathan Chettiar, Merchant, South Street, Aruppukottai, Ramanathapuram District.

P. N. SHINGHAL, Secy.

No. 19/5/52-Elec.III.—Whereas the election of Shri Vartak Govind Rao Dharmaji of Virar, Taluka Bassein, District Thana, Bombay State, as a member of the House of the People, from the Thana constituency of that House has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Gidwani Choithram Partabrai of 152, Queens Road, Bombay;

And whereas, the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said Petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now therefore, in pursuance of the provisions of section 106 of the said Act the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION NO. 5 OF 1952

CORAM

Shri M. S. Noronha, B.A., LL.B., J.P.—*Chairman.*

Shri R. S. Vaze, B.A., LL.B., }
Shri A. A. Adarkar, B.A., LL.B., } *Members of the Election Tribunal.*

In the matter of the Representation of the People Act, 1951

And

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951

And

In the matter of the Election Petition presented thereunder by Shri Gidwani Choithram Partabrai,

Gidwani Choithram Partabrai of 152, Queens Road, Bombay Petitioner.

Versus

1. Agnani Thakurdas Chuhamal of 10-B, Abdul Kadir Mansion, Cirrus Avenue, Lamington Road, Bombay No. 8.
2. Rohera Kundandas Totaldas of 3154, Churni Road, Bombay 3.
3. Vartak Govind Rao Dharmaji of Virar, Taluka Bassein, District Thana.
4. Zunzarrao Doulat Jayaram of Ganesh Bhuwan, Dr. Ambedkar Road, Kalyan, District Thana.
5. Bokad Bholanath Ganpat of Murbad District Thana.
6. Lakhan Navsoo Padoo of Vikramgad, Taluka Jawhar, District Thana.
- **7. Nandkar Anant Sawalaram of Jawahar, District Thana.
8. The Returning Officer, Thana House of the People Constituency, Thana.

Respondents

** (Since deceased and hence struck off on the Petitioner's application on 10th July 1952.)

JUDGMENT

The Petitioner was one of the duly nominated candidates for the general seat in the House of the People from the Thana Constituency in the State of Bombay at the last general elections. The constituency in question is a plural member one and has two seats for the House of the People, one seat being reserved for a member of the Scheduled Tribes. Respondents Nos. 1, 2, 3 and 4 were the other duly nominated candidates for the said general seat, while Respondents Nos. 5, 6 and 7 were duly nominated candidates as members of the Scheduled Tribes. In the Thana District there were also several Bombay Legislative Assembly Constituencies, some of which were single member ones and others plural member ones, with a seat reserved for the Scheduled Castes or the Scheduled Tribes. The polling for the seats in the House of the People and for those in the Bombay Legislative Assembly took place simultaneously on the 3rd, 7th and 11th of January 1952. Among the polling stations in the Thana District there was one at a place called Akarpatti, which had two polling booths, Nos. 1 and 2 respectively. It appears that while distributing the ballot papers the Presiding Officer in Charge, one Sadashiv Mahadeo Bhise, through mistake issued to the electors in Booth No. 2 of Akarpatti Polling station ballot papers meant for the Bombay Legislative Assembly in lieu of ballot papers meant for the House of the People and *vice versa*. The said mistake went undiscovered until counting of the votes in the Constituency commenced on the 14th of January 1952. The result of the counting of the votes for the House of the People in the Akarpatti Polling Booth No. 2 was as follows: The Petitioner secured 357 votes alleged to be valid and 14 invalid ones, while Respondent No. 3 secured 74 votes alleged to be valid and 10 invalid votes. On the 17th of January 1952 the Returning Officer of the Thana Constituency rejected all the votes cast at the Akarpatti Polling Station Booth No. 2 as invalid on the ground that the Presiding Officer and Polling Officers at this station had wrongly issued to the electors for the House of the People ballot papers meant for the Bombay Legislative Assembly.

2. Thereupon Petitioner's agent made a petition to the Returning Officer on 17th January 1952 stating that the mistake resulting in interchange of ballot papers was committed by the Presiding Officer and was not due to any fault on the part of the voters or of the candidate, and praying that under the circumstances the ballot papers should be considered as valid votes for the House of the People. The Returning Officer, however, refused to accede to this prayer. His reason was that under instructions from the Election Commission he was bound to declare all these ballot papers as invalid, since the interchange of ballot papers was noticed after the counting began. On the 22nd of January 1952 the Petitioner himself presented a petition to the Returning Officer stating that there was sufficient legal ground to consider votes cast at the Akarpatti polling booth as valid and requesting the Officer to refer the matter to the Election Commission and pending their decision to suspend the counting. The Returning Officer by his reply of the same date refused to comply with the Petitioner's request, stating that the Election Commission had already held that the interchange of ballot papers cannot be regularised if the mistake was detected in the course of counting. The Petitioner then addressed two telegrams direct to the Election Commission at New Delhi praying that the ballot papers in question should be treated as valid, but the Election Commission failed to accede to the prayer. After eliminating the votes cast for the House of the People seat at Akarpatti Polling Station Booth No. 2, the result of the election was as follows: Respondent No. 3 secured 140,604 votes, Petitioner 140,595 votes and Respondent No. 7, 151,952 votes. On the basis of these results Respondent No. 7

(Scheduled Tribes) and Respondent No. 3 (General Seat) were declared duly elected to the House of the People from the Thana Constituency and the result was published in the Government of India Gazette on 26th January 1952. It is clear from these figures that if the 357 allegedly valid votes obtained by the Petitioner and the 74 allegedly valid votes obtained by Respondent No. 3 at Akarpatti Polling Booth No. 2 had not been rejected by the Returning Officer but had been taken into account, the Petitioner would have obtained in the aggregate 274 votes more than Respondent No. 3 and would have been declared duly elected to the House of the People from the Thana Constituency. As things turned out actually, the Respondent No. 3 got only 9 votes more than the Petitioner, and was declared elected.

3. The Petitioner has in the circumstances presented this Petition under Section 81 of the Representation of the People Act, 1951, alleging that the Returning Officer acted illegally in rejecting as invalid the votes cast at Akarpatti Polling Station Booth No. 2 and that this illegal rejection has materially affected the election of the candidates for the general seat, and praying that the election of Respondent No. 3 be declared void and Petitioner himself be declared to have been duly elected and for such other or further reliefs as may be deemed fit by the Tribunal and for costs of the Petition. The Petitioner has set out in the Petition the various grounds on which he relies for contending that the rejection of the ballot papers in this case was illegal. These will appear in the course of the arguments of his learned counsel and in the judgment of the Tribunal.

4. At the trial the Petitioner was represented by Shri Fatehchand Assudomal, advocate. Respondents 1, 2, 4, 5 and 6 were absent. Respondent No. 3 was represented by Shri Kantilal T. Desai, advocate, instructed by Messrs. Bhaishankar Kanga and Girdharial, and Respondent No. 8 who was the Returning Officer was represented by Shri S. S. Kazi, Government pleader, Thana. Respondent No. 7 appeared in person. Shri Desai put in a written statement on behalf of Respondent No. 3, in which Respondent No. 3 has submitted that the interchange of ballot papers in a polling station could not have been regularised where the mistake was detected in the course of counting, and that the ballot papers at Akarpatti station Polling Booth No. 2 were rightly and legally rejected by the Returning Officer under Rule 47(1)(c) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, hereinafter referred to as the Rules. He has further denied that the rejection of the said ballot papers has in any way affected either materially or otherwise the result of the election, and in the circumstances he has prayed that the Petition should be dismissed with costs. The Respondent No. 7 put in a written statement stating that he was not concerned either directly or indirectly with this Election Petition, that he had nothing to say in the matter and that the Petition might be proceeded with *ex parte* so far as he was concerned. Shri Kazi put in a written statement on behalf of Respondent No. 8. In this written statement the facts set out in Petitioner's Petition have been substantially admitted. Respondent No. 8 has, however, contended that in view of the mandatory provisions of Rule 47(1)(c) of the said Rules he had no other alternative than to reject these ballot papers, as they clearly violated the provisions of that Rule in that they did not bear the serial numbers and distinguishing marks authorised by the Election Commission for the House of the People Constituency. He has contended further that in view of the mandatory provisions of Rule 47(1)(c) of the said Rules the interchange of ballot papers in a polling station could not have been regularised when the mistake was detected in the course of counting, and he has therefore prayed that the Petition should be dismissed. He has contended further that he was not a necessary party to the Petition and that he has been unnecessarily joined as a Respondent and that in the circumstances the Petitioner should be ordered to pay his costs. It may be mentioned with regret at this stage that Respondent No. 7 died after the first hearing of the Petition. At the second hearing, therefore, his name as a Respondent was struck off on an application in that behalf made by the Petitioner on affidavit.

5. At the commencement of the trial of the Petition the Petitioner was granted leave with the consent of the Respondents to amend his Petition by furnishing certain additional particulars and also by introducing an alternative prayer. The Petitioner has accordingly filed his amended Petition containing those particulars and the addition of an alternative prayer *viz.*, "in the alternative the Tribunal will declare the election of Respondent No. 3 void under Clause (b) of Section 98 of the Representation of the People Act, 1951". In the supplementary written statement filed by Shri Desai on behalf of Respondent No. 3 it has been submitted that the additional relief in the alternative asked for in the amended Petition is barred by the Law of Limitation.

6. Before the Tribunal proceeds to the main issues in the case the two narrow points arising from the pleadings may be disposed of at the very outset. Dealing first with the plea of Respondent No. 3 that the amended prayer is barred by Limitation, it appears to the Tribunal that there is not much substance in it. Rule 119 of the Rules prescribes the time within which an election petition shall be presented. It is not the 3rd Respondent's case that the Petitioner has offended the provisions of this Rule in filing this Petition. If the Petition is admittedly filed in time, it is obvious that no question of limitation could arise as regards any subsequent amendment of the reliefs prayed for either by way of addition or in the alternative. The original Petition itself contained a prayer 'for such other or further reliefs as the Tribunal may deem fit'. Under Section 90(2) of the Representation of the People Act, 1951, the procedure to be followed in the trial of petitions is, as nearly as may be, the procedure laid down by the Code of Civil Procedure. Under Order 7 Rule 7 of the Code of Civil Procedure it is laid down that it shall not be necessary for a party to ask for general or other relief, as it is competent to the court at all times to grant any relief that it may think just to the same extent as if it had been asked for. Besides, under Section 98 of the Representation of the People Act, 1951, the Tribunal is invested with power to pass, at the conclusion of the trial of an election petition, any of the four orders set out in the said section. In the opinion of the Tribunal, therefore, if the evidence in the case warranted such a course, it would have been quite competent to the Tribunal to grant the additional relief now asked for in the alternative by the Petitioner without a specific prayer in that behalf. The Tribunal is therefore of the opinion that no question of limitation whatever arises in this case. The question of limitation would have arisen, if at all, if the Petitioner had sought to add a new and additional party as Respondent in the case. It is well settled law that leave to amend a plaint or petition can be granted at any stage, even at the stage of appeal, provided the amendment does not in any way radically change the character of the plaint or the petition.

7. Turning now to Shri Kazi's grievance that Respondent No. 8 had been unnecessarily added and that the Petition should be dismissed as against him with costs, the Tribunal does not see any substance in this grievance. Section 82 of the Representation of the People Act, 1951, provides that the Petitioner shall joint as Respondents to his petition all the candidates who were duly nominated at the election. It is not stated anywhere in the said Act that the Returning Officer should not be made a party. Under the Civil Procedure Code a person may be made a party to an action either because he is a necessary party or a proper party. The Tribunal is not prepared to say that the Respondent No. 8 is a necessary party to this Petition, but in view of the allegations of irregularity and illegality made against him and his subordinates by the Petitioner, the Tribunal thinks that the Returning Officer is a proper party. Shri Kazi has relied on the decision in Tahir Ahmed V/s Humayun Reza, Indian Election Cases by Sen and Poddar, P.704. In that case the allegation against the Returning Officer was that he had improperly accepted the nomination paper of the Respondent. It was held by the Commission that as no allegations of misconduct had been made against him, the Returning Officer was not a necessary party. This decision does not help Respondent No. 8 very much because this Tribunal is of the opinion that he is a proper party for the reasons stated above.

8. The main question in this case is whether the ballot papers found in the ballot boxes of Booth No. 2 of Akarpatti Polling Station were properly rejected by the Returning Officer under Rule 47 Clause (1) Sub-clause (c) of the Rules. Rule 47(1)(c) runs as follows: "A ballot paper contained in a ballot box shall be rejected if it bears any serial number or mark different from the serial numbers or marks of ballot papers authorised for use at the polling station or the polling booth at which the ballot box in which it was found was used". To understand and appreciate the exact impact of this rule on the facts and circumstances of the present case it would be necessary to have an idea of the background of this election. Under Article 324(1) of the Constitution of India, 'the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State.....shall be vested in a Commission (referred to in this Constitution as the Election Commission)'. Under Section 59 of the Representation of the People Act, 1951, 'at every election where a poll is taken votes shall be given by ballot in such manner as may be prescribed'. 'Prescribed' is defined by Section 2(g) of the said Act to mean prescribed by Rules made under this Act. The Rule-making power is conferred by Section 169 of the said Act, which provides that the Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. The Tribunal is of the view that these Rules framed under the Act are intended to be directory and not mandatory. The directions given

by the Election Commission (Ex. D) for regularising interchanged ballot papers if discovered before counting also fortify this view. In other words the Rules need not be complied with meticulously in every detail of their requirement, but it is enough if there is a substantial compliance with the provisions of the Rules.

9. Turning now to the Rules regarding the ballot papers and the manner of voting, it is an admitted fact that there is no Rule prescribing a particular form of ballot paper. Rule 20 provides that 'the Election Commission may direct that before any ballot paper is delivered to an elector at a polling station it shall be marked with such official mark as may be specified by the Election Commission in this behalf and the official mark so specified shall be kept secret'. Further, Rule 28 provides that 'the ballot paper to be used for the purpose of voting at an election to which this Chapter applies shall contain a serial number and such distinguishing marks as the Election Commission may decide'. The general instructions issued by the Election Commission to all Returning Officers of all the States in India on 22nd October 1951 have been produced and marked as Exhibit No. 7. Exhibit No. 7 shows that the Election Commission did not issue any directions or specify any mark under Rule 20. Whereas under Rule 28 the following direction was given: "Before the printed serial number in each ballot paper there shall be printed as a prefix the letters 'BY' in the case of ballot papers to be used in Bombay State. The ballot papers to be used for the Legislative Assembly elections will have a thick brown bar printed near the left margin thereof, whereas ballot papers to be used for the House of the People elections will have a thick green bar similarly printed thereon. In a two member constituency, each elector will be given two ballot papers. In order to check cumulative voting which is not allowed by law, both the ballot papers that an elector receives will bear the same serial number, but one of them will have the letter 'A' printed as a suffix after the serial number. "It is obvious from this that unless a voter was conversant with the serial numbers employed in the two sets of voting papers, the only feature that would be noticeable by him, if at all he made a careful scrutiny, would be the different coloured bars on the left hand side of the voting papers. It is obvious that these directions and instructions of the Election Commission do not have the force of Rules framed under the Representation of the People Act, 1951. In their instructions the Election Commission also directed that the ballot boxes in the case of the election to the House of the People should be painted with a green colour, while the boxes for the election to the Bombay Assembly were to be painted with a brown colour.

10. It is common knowledge that in the last general elections the electors were provided with one or more voting papers according to the number of seats allotted to a constituency. The voting papers contained no names. In each booth different candidates had different boxes allotted to them. The elector was not required to make any mark or put any signature on the ballot papers. All that he had to do was to deposit the ballot paper into the box allotted to and bearing the election symbol of the candidate for whom he wanted to vote. The Tribunal has carefully examined the ballot papers employed in the Thana Constituency election. Three specimen forms have also been produced in the case. A close scrutiny of the ballot papers reveals no distinction as to size, colour or appearance of the ballot papers meant for the House of the People and those meant for the Bombay Assembly, except that the former have a green bar and the latter a brown bar on the left hand side near the margin. These different coloured bars are not matters of public knowledge, nor are they invested with such sanctity as would be derived from a statutory provision in regard to such colour-bars. It would not be too much to say that so far as the voters went they could not have been misled whether they were given ballot papers meant for the House of the People for the Assembly election or *vice versa*. The evidence of the Presiding Officer of Akarpatti Polling Station Shri Bhise in cross-examination is illuminating on this point. He says: "I did not notice the distinguishing coloured bars on the ballot papers of the House of the People and the Bombay Legislative Assembly. The colours of both types of ballot papers were the same and there was nothing to distinguish one from the other. I handled the ballot papers but no visible difference between the two sets was noticed by me."

11. Nobody disputes in this case the bona-fides of the Returning Officer. He has acted, as he was bound to, in accordance with the instructions issued by the Election Commission to all Electoral Officers in the different States—see Exhibit 'D'. According to these instructions of the Election Commission, if the interchange of voting papers is discovered during the progress of the poll, the Presiding Officers are directed to continue with the same variety of ballot papers for either election right till the end, and then report the matter to the Returning Officer who would immediately obtain the Commission's amended directions regularising the issue of a wrong variety of ballot papers. If, however, the mistake is discovered in the

course of the counting of a particular ballot box or boxes, the Commission would not regularise the mistake. In such a case the Commission has directed the wrong ballot papers issued and used in connection with the election to be rejected by the Returning Officer at the time of counting. The Returning Officer in this case acted according to the Election Commission's directions. This does not mean that the Election Commission's directions are in any way binding on the general public or the candidate for election. The Election Commission's reasoning, apparently, is that once the polling is over and the stage of counting has been reached, their power to give directions regarding the form and contents of the ballot paper or regarding the amendment thereof comes to an end. The Petitioner has caused to be produced from the Election Commission a statement (Ex. 'E') of a number of cases, 23 of which were in Bombay State alone, where the Commission regularised the use of Assembly ballot papers for the House of the People at the last election. It is clear, however, from the letter of the Election Commission to the Deputy Secretary Bombay Government (Ex. No. 3), that in all those cases the interchange of ballot papers was noticed either during the course of the poll or at the end of the day's poll and was brought to the notice of the Commission immediately thereafter and was regularised before the commencement of the counting. In no case according to the letter of the Election Commission was a mistake discovered after the commencement of the counting held to be a mere irregularity and then regularised. The Tribunal is not concerned with the interpretation put by Election Commission on Rule 47(1)(c); nor can the Tribunal take the attitude adopted by the Election Commission in the matter of regularising or not mistakes in the issue of ballot papers as a guide or criterion. But the interpretation placed and the attitude taken by the Election Commission amply supports and illustrates the view that the provisions of Rule 47 are not mandatory but directory, and that the Returning Officer has in proper cases a large amount of discretion given to him in the application of the Rule. Under Rule 47(4) the Returning Officer's decision is final subject to the decision of the Election Tribunal.

12. The learned advocate for the Petitioner has argued that the Returning Officer has a wide discretion vested in him under Rule 47; that the mere fact that a ballot paper bears any serial number or mark different from the serial number or mark authorised for use at the polling station or the polling booth, is not necessarily a ground for rejecting the ballot paper in question; and that there are other considerations governing the conduct of the Returning Officer in such a case. The other considerations according to him are: whether the votes cast by the electors at Akarpatti Polling Booth No. 2 were genuine votes, whether they represented the true intention of the electors, whether the interchange of ballot papers could have misled the voters and whether the interchange of ballot papers in any way disclosed the identity of the voters or interfered with the secrecy of the ballot. In support of his argument he cited the case of Abdul Majid V/s Sayad Ahmed—Vol. I, Doabia's Indian Election Cases P. 229. In this case votes were recorded by means of ballot papers which were in the prescribed form and bore the official mark, but they contained a wrong description of the constituency and a mistake in the date of polling. The electors were not required to put any mark on these ballot papers because the names of the candidates were not mentioned thereon. The voters merely had to put the ballot papers in the ballot box assigned to the candidate for whom they had gone to vote. It was held by the Election Tribunal that the incorrect description of the constituency and the wrong date of polling mentioned on the ballot papers was of no consequence whatever so far as the electors were concerned and that they could not have been misled in any way. It was held therefore that these votes were properly accepted. It was argued by Shri Fatechand therefore that the issue of wrong ballot papers in this case did not mislead the voters, and that the ballot papers cast in the Petitioner's ballot box represented the true intention of the electors to vote for the Petitioner and the ballot papers should not in the circumstances have been rejected.

13. Shri Kantilal, the learned counsel for Respondent No. 3, contended that the words 'authorised for use' employed in Rule 47(1)(c) meant authorised for use for a particular constituency. In the present case he argued that ballot papers bearing different serial numbers and marks were authorised for use for the House of the People Constituency and the Bombay Assembly Constituency, respectively. Owing to the mistake of the Presiding Officer the ballot papers meant for the Bombay Legislative Assembly were issued and used in the place of ballot papers meant for the House of the People. The mistake was noticed not during the poll but when the poll was over and the counting had started. Shri Kantilal argued that in the circumstances the Returning Officer was bound in law to reject the ballot papers in question and the Petitioner can have no grievance and no remedy.

14. Shri Kazi, the learned advocate for Respondent No. 8, contended that the rejection of the ballot papers in this case was perfectly correct and in order. He cited Sarin and Pandit's Indian Election Law, 1951 Edition, P. 441, where it says, 'when a certain procedure is laid down it must be presumed that it was meant to be followed and that its non-observance would make the proceeding inoperative and invalid. The non-compliance with the provisions of the Constitution or of this Act or any other Act or Rules relating to elections or any mistake in the use of any prescribed form authorises the Tribunal to declare the election of the returned candidate as void, provided such non-compliance or mistake is proved to have affected the result of the election'. It is interesting to note that the same authors (Sarin & Pandit) say at P. 443 of the book that an order allotting a particular colour to a particular candidate or altering a colour allotted to him or even the order prescribing that the boxes shall be coloured in a particular manner has not the force of a Rule. Shri Kazi says that this Petition in the circumstances must be dismissed or at any rate re-election might be ordered either at Akarpatti only or in the entire constituency. According to him the Tribunal should hold to be void either the election at Akarpatti only or the whole election in its entirety. Mr. Kazi says that a re-poll should be taken at one Polling Station only. This would not now be possible. If an election is set aside, it should be of the whole Constituency and in that event there would be fresh nominations. There cannot be a partial election limited to previous candidates only. Mr. Kazi apparently has not considered fully the implication of his contention regarding partial poll only. Obviously his other submission only remains, viz., that according to him the whole election should be held void.

15. The Tribunal had the benefit of the views of the learned Advocate General, Bombay, who had been invited under Section 89 of the Act to appear and assist the Tribunal. In his opinion the question at issue is a very narrow one. Rule 47(1)(c) provides for the rejection by the Returning Officer of a ballot paper if it bears any serial number or mark different from the serial number or mark authorised for use at a polling station or a polling booth. His argument is that the ballot papers issued by the Presiding Officer at Akarpatti Polling Station actually bore the serial number and marks authorised for use at the Polling Station. Whether the ballot papers meant for the Bombay Assembly were issued instead of ballot papers meant for the House of the People made no difference *per se* as they were all authorised for use at the polling station. When the Presiding Officer gives a ballot paper to a voter he authorises the voter to use the same. If the voter has given the vote that vote, according to the learned Advocate General, should be held to be valid, unless it is proved that he was misled by the ballot paper into giving his vote to the party for whom he did not intend to vote. It is plain enough that where the object of a statute is clear and it contains an absolute and mandatory enactment, the terms of that enactment must be strictly followed. But in *Woodward V/s Sarsons*, Law Reports 10 C.P.733, the Court held that a different principle applied to the Schedules of the Ballot Act which contained rules and regulations for carrying out the object of the enactments in the body of the Act. It was considered that those regulations were directory only and that it was sufficient if they were obeyed substantially. In this connection the following passage from Maxwell's Interpretation of Statutes (8th Edition), page 326, might be profitably quoted: "Where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them. It has often been held, for instance, when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time."

16. From the preceding paragraphs it must be clear that the Tribunal is of the opinion that Rule 47(1)(c) is merely directory. A strict meticulous compliance with the provisions thereof is not essential, but substantial compliance is enough. In the present case, at the Akarpatti Polling Station Booth No. 2, the ballot papers found in the ballot boxes actually contained the serial numbers and marks of ballot papers authorised for use at the polling station, though, no doubt, there was an interchange of ballot papers. These ballot papers had been issued by the Presiding Officer in the ordinary course of his duties and the voters were authorised impliedly to cast their votes by means of the ballot papers given. In the circumstances if the Tribunal accepts the view of the learned Advocate General, and

there is no reason why it should not, there has been no irregularity committed at the Akarpatti Polling Station. In fact, the provisions of Rule 4(1)(c) have been literally complied with. Shri Kantilal the learned counsel for Respondent No. 3 has argued that the words 'authorised for use at the polling station' should be interpreted to mean 'authorised for use at the polling station at the election for a particular constituency'. The Tribunal does not agree with this interpretation; nor does it see any reason for incorporating into Rule 4(1)(c) words that are not actually to be found in it. Assuming however that the interchange of ballot papers in the present case constituted an irregularity it was one that could have been condoned and regularised by the Election Commission. In fact the Election Commission has regularised many such cases of irregularity all over India—*vide* Ex. 'E'—but in their view the irregularity can only be regularised before the counting of the votes actually starts. This attitude of theirs has received support from Shri Kantilal and Shri Kazi. In a previous paragraph the Tribunal has referred to the reason underlying this view of the Election Commission, which is that the Election Commission's powers to give directions regarding the form and distinguishing marks of ballot papers are extinguished after the polling is over. Whatever may be said for this view of the Election Commission, the Tribunal is of the opinion that any irregularity committed within the meaning of Rule 4(1)(c) can be looked into and condoned by the Tribunal, if it is found to be not of a vital nature affecting the election.

17. To determine whether the assumed irregularity in the present case has affected the election it would be necessary to consider whether the interchange of ballot papers put the voters on the wrong track and whether the voting in this case represents the true intention of the electors. In other words the question is whether the votes cast at Akarpatti Polling Station Booth No. 2 were truly indicative of the electors' free choice. In *Mohansingh V/s Santokhsingh*, Vol. I, Doabia's Indian Election Cases, P. 192, it was held that ballot papers cannot be rejected merely because they bore some writing in addition to the cross mark against the names of the candidates voted for, unless it affords the means of identifying the voter; and that what is material about the ballot paper is that there should be a clear indication that the elector intended to vote for a particular candidate. Having given careful thought to the matter the Tribunal is of the opinion that the interchange of ballot papers at Akarpatti could not have misled any of the electors and that the votes cast at Booth No. 2 represent the true intention of the electorate and must be given effect to. As has been fully discussed earlier in this judgment there was nothing in the ballot papers to indicate that they were meant for the House of the People or for the Bombay Legislative Assembly. In fact the Presiding Officer Shri Bhise himself who handled the ballot papers could not find which ballot paper was for which House. It is significant also that the interchange was not noticed by any of the electors or by the staff of the polling station or by the agents of the candidates. The procedure adopted in casting the votes was also such that nobody could have been misled into the belief that he was voting for the Bombay Legislative Assembly when actually voting for the House of the People and *vice versa*. As Shri Bhise has stated in his evidence, 'each voter was first given ballot papers for the Legislative Assembly. After he had voted for the latter he was given ballot papers for the House of the People'. From this it follows that when an elector went to the first compartment in the booth he knew he was voting for the Bombay Legislative Assembly and the boxes there showed the symbols of the candidates standing for election to that Assembly. Then thereafter when he went to the next compartment he knew he was voting for the House of the People and the ballot boxes there showed the symbols of candidates standing for election to the House of the People. The Tribunal therefore finds that the interchange of ballot papers at Akarpatti Polling Station Booth No. 2 did not in any way mislead the electors concerned; that the said interchange did not affect the election materially or otherwise; and that the votes cast by the electors at that booth represent the clear and free choice of the electors and should therefore be given effect to. The Tribunal further comes to the conclusion that the rejection of the votes in question by the Returning Officer was improper. There is no dispute that such rejection if held to be improper would materially affect the result of the election and the Tribunal holds accordingly.

18. In the result the Tribunal holds that there has been an improper rejection of the votes cast at the Akarpatti Polling Station Booth No. 2. Taking into account the said votes, the Tribunal finds that the Petitioner has in fact received a majority of 274 votes over Respondent No. 3. In the circumstances the Petitioner is entitled to a declaration under Section 100(2)(c) of the Representation of the People Act, 1951, that the election of Respondent No. 3 to the seat in the House of the People from the Thana Constituency is void and to a further declaration under

Section 101(a) that the Petitioner has been duly elected to the said seat. Under Section 98 of the said Act therefore the Tribunal makes an order declaring the election of the returned candidate Respondent No. 3 to be void, and declaring further the Petitioner to have been duly elected to the seat in the House of the People from the Thana Constituency at the last general election. Under Section 98 of the Act the Tribunal orders Respondent No. 3 to pay for costs of and incidental to this Petition the sum of Rs. 300 to the Petitioner and the sum of Rs. 200 to the Advocate General. No costs are awarded to the Respondent No. 8 as his rejection of the ballot papers in this case has been held to be improper by the Tribunal.

BOMBAY,

11th August, 1952.

(Sd.) M. S. NORONHA,

(Sd.) R. S. VAZE.

(Sd.) A. A. ADARKAR.

P. S. SUBRAMANIAN

Officer on Special Duty.